

ESTTA Tracking number: **ESTTA595856**

Filing date: **04/01/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Therakos, Inc.
Granted to Date of previous extension	04/02/2014
Address	10 N. High Street 3rd Floor West Chester, PA 19380 UNITED STATES
Attorney information	James G. Goggin Verrill Dana, LLP One Portland Square P.O. Box 586 Portland, ME 04112-0586 UNITED STATES jgoggin@verrilldana.com Phone:207-774-4000

Applicant Information

Application No	85808960	Publication date	12/03/2013
Opposition Filing Date	04/01/2014	Opposition Period Ends	04/02/2014
International Registration No.	NONE	International Registration Date	NONE
Applicant	Maco Pharma Rue Lorthiois Mouvoux, FRX 59420 FRX		

Goods/Services Affected by Opposition


<p>Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: PHARMACEUTICAL PRODUCTS, NAMELY, SOLUTIONS FOR USE IN CONNECTION WITH THE PROCESSING OF BLOOD AND BLOOD COMPONENTS FOR MEDICAL PURPOSES, BAGS FILLED WITH SOLUTIONS FOR PROCESSING BLOOD FOR MEDICAL PURPOSES; NONE OF THE FOREGOING BEING PREPARATIONS OF THE TREATMENT OF COLDS OR INFLUENZA</p>
<p>Class 010. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: MEDICAL DEVICES FOR PROCESSING BLOOD, NAMELY, MEDICAL KITS COMPRISED OF BLOOD FILTERS, POUCHES AND PLASTIC TUBING; POUCH AND CONTAINER SYSTEMS COMPRISING BLOODCOLLECTION BAGS FOR MEDICAL PURPOSES FOR THE PROCESSING OF BLOOD OR BLOOD COMPONENTS</p>

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Dilution	Trademark Act section 43(c)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4115195	Application Date	06/03/2008
Registration Date	03/20/2012	Foreign Priority Date	NONE
Word Mark	THERAKOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: First Use: 1999/07/09 First Use In Commerce: 1999/07/09 pharmaceutical preparations for use in extracorporeal photopheresis, extracorporeal photo immune therapy, extracorporeal photo chemotherapy and cellular therapies</p> <p>Class 010. First use: First Use: 2009/06/18 First Use In Commerce: 2009/06/18 therapeutic medical device for extracting blood from the body, separating blood, treating it extra corporally, and returning it to the body, used for extra corporeal photopheresis, extra corporeal photo immune therapy, extra corporeal photo chemotherapy, and cellular therapies</p> <p>Class 044. First use: First Use: 2009/12/05 First Use In Commerce: 2009/12/05 medical services relating to extra corporeal photopheresis, extra corporeal photo immune therapy, extra corporeal photochemotherapy, and cellular therapies</p>		

Attachments	77489277#TMSN.jpeg(bytes) THERAFLEX.NoticeOpp.040114.pdf(1789183 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/James G. Goggin/
Name	James G. Goggin
Date	04/01/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant:	Maco Pharma société anonyme)
)
Serial No.:	85/808,960)
)
Filing Date:	June 21, 2013)
)
Mark:	THERAFLEX)
)
Published:	December 3, 2013)
)

Therakos, Inc., Opposer

v.

Maco Pharma, Applicant

Opposition No. _____

NOTICE OF OPPOSITION

Opposer: Therakos, Inc.
a Florida Corporation
10 North High Street, 3rd Floor
West Chester, PA 19380

The above-identified Opposer believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for the opposition are as follows:

1. This is an opposition by Therakos, Inc. ("Therakos"), an international provider of medical devices and services, to stop another from registering the trademark "THERAFLEX," which is confusingly similar to Therakos's common law and federally registered "THERAKOS" trademark.

2. Therakos uses the THERAKOS mark on its pharmaceutical preparations, medical devices and services for photopheresis and blood treatment and on materials promoting its

medical devices and services to medical professionals and consumers. The goods are sold to and used by hospitals and medical professionals throughout the United States and worldwide.

3. Therakos first began selling its pharmaceutical preparations under the THERAKOS trademark at least as early as 1999, and first began promoting its medical services under the THERAKOS trademark at least as early as 2009. Such use began with Therakos' predecessor in interest, Johnson & Johnson, and Therakos has continued such use on both goods and services. Since that time, both the prior owner and Therakos have spent significant time and money promoting that trademark to customers nationwide and worldwide. Customers have come to know the THERAKOS mark as a symbol of Therakos' quality products and services.

4. Therakos owns United States Trademark Registration No. 4,115,195, dated March 20, 2012, for the word mark "THERAKOS" for "pharmaceutical preparations for use in extracorporeal photopheresis, extracorporeal photo immune therapy, extracorporeal photo chemotherapy and cellular therapies" in International Class 005; for "therapeutic medical device for extracting blood from the body, separating blood, treating it extra corporally, and returning it to the body, used for extra corporeal photopheresis, extra corporeal photo immune therapy, extra corporeal photo chemotherapy, and cellular therapies" in International Class 010; and "medical services relating to extra corporeal photopheresis, extra corporeal photo immune therapy, extra corporeal photo chemotherapy, and cellular therapies" in International Class 044. A copy of the TESS electronic database of the USPTO for Registration No. 4,115,195, is attached as Exhibit 1.

5. On December 21, 2012, Maco Pharma ("Applicant") filed the instant application to register the trademark THERAFLEX. The application requests registration for "Pharmaceutical products, namely, solutions for use in connection with the processing of blood and blood components for medical purposes, bags filled with solutions for processing blood for

medical purposes; none of the foregoing being preparation of the treatment of colds or influenza” in International Class 005, and “Medical devices for processing blood, namely, medical kits comprised of blood filters, pouches and plastic tubing; pouch and container systems comprising blood collection bags for medical purposes for the processing of blood or blood components” in International Class 10. The application is based on the applicant’s registration of the mark in the European Union.

7. Therakos’ rights in the THERAKOS mark in the U.S. predate the Applicant’s rights (if any) in the THERAFLEX mark in the U.S.

8. The THERAFLEX mark so closely resembles Therakos’ THERAKOS mark when applied to the goods covered by the Application as to cause confusion, mistake or deception as to the source of Applicant’s goods.

9. The goods described in the Application are similar or identical to the goods covered by Therakos’ registration for the THERAKOS mark. As a result of the similarity of goods, the public is likely to be confused about whether Therakos is the source of Applicant’s goods or whether Therakos is affiliated with or the sponsor of Applicant’s goods.

10. Applicant’s use of the THERAFLEX mark will infringe and/or dilute Therakos’ prior rights in the THERAKOS mark.

11. Applicant’s registration and/or use of THERAFLEX will interfere with Therakos’ use of its THERAKOS mark and will harm Therakos.


Therefore, Therakos respectfully requests that the Board refuse registration of the THERAKOS mark.

The filing fee of \$300.00 for this Notice of Opposition is filed herewith.

Respectfully submitted,

VERRILL DANA, LLP


Dated: April 1, 2014

By: 
James G. Goggin
Attorney for Opposer
One Portland Square
P.O. Box 586
Portland, ME 04112-0586
(207) 774-4000

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on Applicant on April 1, 2014 by mailing the true and complete copy via First Class Mail, postage prepaid, to:

Andy I. Corea
St. Onge Steward Johnston & Reens LLC
986 Bedford St.
Stamford, CT 06905-5610


James G. Goggin
Attorney for Opposer



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THERAKOS

**Word Mark
Goods and
Services**

THERAKOS

IC 005. US 006 018 044 046 051 052. G & S: pharmaceutical preparations for use in extracorporeal photopheresis, extracorporeal photo immune therapy, extracorporeal photo chemotherapy and cellular therapies. FIRST USE: 19990709. FIRST USE IN COMMERCE: 19990709

IC 010. US 026 039 044. G & S: therapeutic medical device for extracting blood from the body, separating blood, treating it extra corporally, and returning it to the body, used for extra corporeal photopheresis, extra corporeal photo immune therapy, extra corporeal photo chemotherapy, and cellular therapies. FIRST USE: 20090618. FIRST USE IN COMMERCE: 20090618

IC 044. US 100 101. G & S: medical services relating to extra corporeal photopheresis, extra corporeal photo immune therapy, extra corporeal photo chemotherapy, and cellular therapies. FIRST USE: 20091205. FIRST USE IN COMMERCE: 20091205

**Standard
Characters
Claimed****Mark Drawing
Code**

(4) STANDARD CHARACTER MARK

Serial Number

77489277

Filing Date

June 3, 2008

Current Basis

1A

**Original Filing
Basis**

1B

**Published for
Opposition**

October 28, 2008

Registration

Number 4115195
Registration Date March 20, 2012
Owner (REGISTRANT) Johnson & Johnson CORPORATION NEW JERSEY 10 N. High Street 3rd Floor
West Chester PENNSYLVANIA 19380
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Cheryl L. Foytlin
Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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